

COUNTY OF YORK

MEMORANDUM

DATE: June 8, 2001 (BOS Mtg. 6/19/01)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Application No. ZT-56-01, York County Board of Supervisors, “Eating Facilities” at Marinas

Issue

This application, which has been sponsored by the Board of Supervisors, proposes amendments to Sections 24.1-104 and 24.1-462 and 463 of the Zoning Ordinance to revise the definition of the term “Marina” and to establish certain performance standards for “eating facilities” associated with marinas.

Background

1. Section 24.1-104, Definitions, currently contains the following definition of the term *Marina*:

A facility designed for dockage, storing, servicing, berthing, fueling, repairing or securing of primarily pleasure boats and which may include eating and retail facilities for owners, members, crews or guests and may have loading and unloading facilities;

- *Wet Slip: A marina where boats are docked and secured in the water. Covered or uncovered slips may be provided.*
 - *Dry Storage: A marina where boats are stored on land, either indoors or out, which may include provisions for transfer to and from the water by mechanical means upon request.*
2. Marinas are further distinguished in the Table of Land Uses set out in Section 24.1-306 of the Zoning Ordinance under Category 9 – Recreation and Amusement Uses (non-governmental), as follows:
 - *Marina, Dock, Boating Facility (Commercial):* Permitted as a matter of right in the WC/I, IL and IG zoning districts.
 - *Marina, Dock, Boating Facility (Private/Club):* Permitted by Special Use Permit in all residential districts and as a matter of right in the WC/I, IL and IG zoning districts.

Sections 24.1-462 and 463 establish certain general performance standards applicable to the establishment of commercial or private/club marinas. None of these standards

relate specifically to “eating facilities” although several (such as the traffic impact analysis requirement) are applicable to eating facility proposals.

3. This application was sponsored by the Board of Supervisors when it became apparent that the existing definition of the term “marina” and the existing performance standards are not clear as to the characteristics of “eating facilities” that may be included in the marina operation. The Board sponsored this text amendment in an effort to address this deficiency. The intent of the proposed amendment is to address the ambiguities and interpretation problems associated this definition and various other related provisions of the Zoning Ordinance. Those issues include:
 - The absence of any specific criteria concerning the allowable size of an “eating facility” associated with a marina;
 - The absence of any specific criteria concerning the physical and operational characteristics of an “eating facility” associated with a marina;
 - The apparent conflict between the provision allowing an “eating facility” in conjunction with a marina and the listings in the Table of Land Uses which indicate that “restaurants” are not permitted in the WC/I, IL or IG Districts where marinas are a matter of right use. The ordinance contains definitions for drive-in, fast food, and sit-down restaurants, which encompass nearly any establishment that serves or sells prepared food for consumption either on or off the premises, yet it does not include a definition of an “eating facility” in a marina.
 - The absence of any guidelines indicating how “eating facilities” can properly be reserved primarily for use by “owners, members, crews or guests”, which appears to be the intent of the existing ordinance.
4. The focus of attention in the discussions about marinas has been the WC/I district. The WC/I district was created with the adoption of the comprehensive Countywide rezoning in 1985. The WC/I district has been applied to eight (8) separate areas of the County’s waterfront, all of which are occupied by existing water-related businesses (marinas, seafood receiving/packing, marine railway, etc.). The WC/I district classification replaced the B1 – General Business classification that formerly applied to several of these areas since that zone allowed a full range of traditional business activities, most of which would have been inappropriate in those locations. The limited range of uses allowed in the WC/I district is intended to recognize the fact that most of the areas classified WC/I are near or within residential areas and, as such, could be impacted by the introduction of business activities that are not water-dependent. At the same time, the district is intended to protect the existing waterfront businesses and provide appropriate opportunities for those businesses to grow and expand their facilities and to include activities that are normal and customary components.
5. It is interesting to note that until the Zoning Ordinance was comprehensively revised in 1995, “sit-down restaurants” were permitted by Special Use Permit in the WC/I District. The significance of this change is that it removed the opportunity for establishment of a restaurant (a type of “eating facility”) as a *Principal Use* standing alone on a property. The *principal use* versus *accessory use* distinction is important and it

is the Zoning Administrator's opinion that the inability to propose a "restaurant" as a principal use does not preclude proposals for establishment of "eating facilities" as accessory uses intended primarily for "...owners, members, crews or guests..." of the marina. However, as noted above, the existing ordinance provisions do not provide any further guidance on how to evaluate and implement this intention.

6. Although none of the existing marinas in York County currently have "eating facilities," there are various establishments in the Hampton Roads area that demonstrate the viability of including restaurants as a component of the marina operation. In fact, this amendment initiative is based on the premise that inclusion of "eating facilities" at York County marinas will continue to be appropriate under certain circumstances. Marina operators have expressed interest in providing such facilities, not only to serve their regular patrons but also transient boaters traveling the Chesapeake Bay. In addition, local recreational boaters have noted their interest in having eating facilities in York County that could be accessed from the water. However, adjoining property owners (most of whom are residential) have expressed clear and legitimate concerns about such facilities and their potential impacts. Therein lies the focus of this application.
7. The proposed amendment, as initially sponsored by the Board, suggested that any commercial marina be permitted to have an eating facility with a maximum of twelve (12) seats as a matter of right, subject to several performance standards intended to ensure the linkage to marina patrons. The proposal also recognized that larger "eating facilities" could be appropriate in conjunction with marinas and it would establish an opportunity for such larger facilities to be approved through a Special Use Permit process. The proposed language set a general guideline for sizing the eating facility but also provided the flexibility to allow the Board to establish a lower or higher maximum capacity based on specific site conditions.
8. The Planning Commission conducted a public hearing on the initial proposal (Attachment 1) on March 14, 2001 and received numerous comments, both positive and negative. Subsequently, the Commission conducted work sessions on March 28th and May 2nd to discuss the proposal in greater detail. As a result of the May 2nd discussions, an alternate draft reflecting the Commission's consensus was prepared (Attachment 2 – *PC Alternate, as amended 5/2/01*). This draft, which suggested more detailed performance standards and a use permit requirement for all restaurants, was forwarded to a 10-person committee for further review and discussion (see Attachments 3 and 4 – *Committee Roster and Meeting Notes*). The committee's meetings and discussion were facilitated by the Planning Commission Chairman, Mr. Spencer Semmes.

The review committee met four times and conducted extensive discussions on the issue of whether, and under what conditions, restaurants (eating facilities) should be allowed in conjunction with marinas. Mr. Semmes encouraged the members to focus their discussion on identifying the potential impacts that might be associated with restaurants at marinas and then to discuss possible ways of mitigating or minimizing those impacts. The discussion was very frank and areas of disagreement between the

residential and commercial representatives were identified and debated extensively. The staff supported the committee's discussions by providing alternate drafts of certain conditions and also by assembling additional information concerning regulations and procedures in other jurisdictions. Although the end result of the discussion was, in many cases, an agreement to disagree, the level of understanding of the differing points of view increased substantially.

The committee's attention focused primarily on the potential impacts that might be associated with a restaurant – such as noise, lighting, odors, outdoor dining activity, deliveries, traffic, etc. – and there was consensus that these impacts should be mitigated. However, while there was agreement that impacts should be mitigated, there were differing opinions as to how that should be accomplished. Generally, the residential representatives favored conditions that would impose both horizontal separation and buffering requirements (e.g., between a restaurant and adjacent residences) while the commercial interests favored standards that would require impacts to be mitigated, but without specifying any minimum spacing standard. The committee discussed this basic philosophical difference in connection with the conditions concerning the location of main and service entrances, service and HVAC equipment, dumpsters, outdoor dining and parking. In addition, the committee discussed issues such as hours of operation, features and uses of the restaurant, parking ratios and location, etc.. While the committee did not take votes and did not prepare a formal recommendation or report, the discussion provided some very valuable ideas for refinement of the performance standards that had been drafted and included in earlier drafts of the proposed amendments.

9. At the conclusion of the committee's discussions the staff and Chairman Semmes prepared a revised draft that attempted to reflect the discussion and consensus (on those few areas where it was reached) of the committee. This draft (Attachment 5) was presented for consideration by the Planning Commission on June 6th at a second public hearing on the issue. This hearing was also well-attended and the opinions expressed again represented the full spectrum ranging from not allowing marina restaurants at all, to allowing marina restaurants of some size as a matter of right but subject to specified performance standards, to requiring any marina restaurant to be approved by Special Use Permit.
10. The Planning Commission considered all the comments and deliberated on the three different versions of the proposal. After discussing the issue thoroughly, the Planning Commission voted 4:3 to forward a slightly modified version of the May 30th draft to the Board with a recommendation for approval (Messrs. Hendricks, Shepperd and Simasek dissented). The Planning Commission's recommendation is shown in proposed Ordinance No. 01- 10, which is attached.

Summary of Planning Commission Recommendation

A general summary description and comments about the language recommended by the Planning Commission and shown in proposed Ordinance No. 01-10 follows:

- The definition of marina is proposed to be revised to delete the separate listings for “wet slip” and “dry storage” facilities since there is no distinction between the two in the Table of Land Uses. The term “eating facility” is proposed to be changed to “restaurant” to avoid any confusion as to the intent or meaning. The phrase “for owners, members, crews or guests” is also proposed to be deleted with the issue of orientation and sizing to be covered in the performance standards.
- Performance Standard (d)(1) addresses several issues. First, it indicates that the restaurant must be an integral component of the marina operation. Although the accessory and patronage limitations have been dropped, this and other provisions are intended to ensure that a restaurant is not established and operated as a stand-alone, principal use of a property. Second this paragraph suggests that very small marinas (those with less than 20 in-water berths/slips capable of accommodating boats of at least 16 feet in length) would not be eligible to have an administratively-approved restaurant (although, per proposed subsection (d)(10), a marina with less than 20 slips could apply for a Special Use Permit to add a restaurant). Third, it suggests that the maximum size for restaurants allowed as a matter of right be set at a ratio of x seats for every in-water slip, up to an absolute maximum of 150 seats. Accordingly, any proposed restaurant in excess of 150 seats (or in excess of the seats to slips ratio) would require a Special Use Permit.

One of the changes made by the Commission at its June 6th meeting was to raise the seats-to-slips ratio from three (3) to four (4). The May 30th draft had proposed the 3-seat ratio based on information from the 1996 Virginia Outdoors Plan, which recommends a 3-person/power boat statistic for planning purposes associated with recreation facility development. The Commission heard and agreed with testimony at its public hearing that indicated the 3-person/boat figure would underestimate the occupancy of many recreational watercraft. I believe reasonable arguments can be made for either figure (3 or 4) and, of course, either would still be capped by the proposed 150-seat maximum. However, since the 3 person occupancy average is cited in the Virginia Outdoors Plan as a recommended planning guide, I recommend that it be retained.

In addition, the Commission discussed in detail the 20-berth/slip threshold for eligibility to establish a restaurant. Several citizens suggested that the threshold be eliminated from the final ordinance, noting that other performance criteria in the draft make it unnecessary. Staff had proposed the threshold with the thought that a restaurant established in conjunction with a very small marina might tend to operate as the principal use of the property. The Commission discussed whether the threshold should be lower, or whether it is needed at all, and ultimately decided to retain it in the recommendation. It should be noted that all of the existing commercial marinas in the County meet this 20-slip threshold.

One additional issue discussed at the Commission's June 6th meeting was the proposed method of linking floor area to seating capacity. Several speakers correctly noted that the 15-square feet per person figure stated in Condition (1) is the minimum allowable for occupancy purposes under the building/fire code and that actual

floor area to seats ratios for restaurants are variable depending on the type of seating proposed. One speaker noted that architectural planning guidelines suggest a range of between 18 and 30 square feet per person or seat, depending on the seating arrangements. However, staff noted that the proposed phrase "...unless the operator provides other assurances that will limit seating capacity to the specified ratio..." is intended specifically to allow the applicant to propose the use of an alternate ratio that is keyed to the type of seating and table arrangements being proposed. The Commission determined that no change in the wording was necessary.

- Condition (d)(2) lists several design/performance standards intended to address noise, light, odor and other potential external impacts that might be associated with a restaurant. The proposed standards rely on horizontal separation and/or buffering or obstruction of sight lines to accomplish this. The standard pertaining to main and service entrances [(2)a)] is intended to mitigate the noise and activity at these entrances that might be offensive to adjacent residential properties. The standard is written to allow existing buildings that block the line-of-sight to serve in lieu of the horizontal separation. The suggested distances represent a proposed "compromise" between the strongly expressed positions of the committee members. At the Commission's June 6th meeting, several speakers requested that the 100-foot dimension be reduced to 50 feet. However, the Commission did not include that change in its recommendation and I believe that 100 feet is an appropriate and reasonable standard.
- Condition (2)b) addresses allowable delivery hours in an effort to limit noise impacts. This is one of the areas on which the committee was able to reach consensus.
- Condition (2)c) addresses parking lot location and buffering to mitigate noise and visual impacts. This also was considered a reasonable provision by the committee.
- Condition (2)d) addresses mechanical and other building systems that might have noise or odor impacts and requires location away from residential properties and/or screening and concealment. The committee felt this was a reasonable provision although some members would have preferred to see a minimum setback/spacing requirement from adjacent residential structures.
- Condition (2)e) addresses garbage containers and collection. It requires location away from adjacent residential structures, concealment, and odor control. It also establishes allowable hours for collection. The committee felt this was a reasonable provision although some members would prefer that it include a minimum spacing requirement from adjacent residential structures.
- Condition (d)(3) addresses outdoor dining areas and requires buffering from adjacent residential properties for noise control. The committee spent quite a bit of time discussing noise control and whether it should be regulated through a decibel limit system or some other standard. The Commission also discussed this and, based on the advice of the County Attorney, decided that instead of recommending language that would limit sound "...so as not to be audible above normal background

levels at the property line...” it would simply reference the existing County noise standards contained in Section 16-19 of the County Code. Those existing provisions prohibit “unnecessary or excessive noise” that would “...endanger the quiet, comfort, repose, health, peace or safety of any person of ordinary sensitivity.” I concur in this recommendation.

- Condition (d)(4) proposes an hours of operation limit that is keyed to seating and serving new customers. The committee spent quite a bit of time discussing the hours of operation issue and the potential disturbance and adverse impact that late night hours could have on adjacent residences. While the marina operators would prefer to have an 11:00 PM limit, the 10:00 PM limit still allows customers to enter as late as 9:59, which seems adequate based on the committee’s discussions and concerns. Also, other conditions relating to noise will help protect adjacent residential uses. The Commission’s recommendation retains the 10:00 PM limit but it also adds a clarification to allow orders to be taken “...for those patrons who have entered...” with in the specified hours.
- Condition (d)(5) addresses noise from music, whether live or recorded, that may be played in the restaurant. It also includes language the committee felt would address concerns about dance floors and ensure against the operation of a facility that might take on the character of a “nightclub.” As with Condition (d)(3), the reference to the existing County Code noise standards was made a part of the Commission’s recommendation.
- Condition Nos. (d)(6) and (7) address potential external impacts from sound and light. The committee felt both of these standards were reasonable and appropriate. The reference to the Illuminating Engineering Society standards will ensure the use of “full-cutoff” fixtures, which will prevent or minimize light spillover onto adjacent property.
- Condition (d)(8) addresses off-street parking and includes language indicating that the marina operator is responsible for confining parking to designated areas. The committee felt this was a reasonable provision.
- Condition (d)(9) essentially reiterates what is already required by the Zoning Ordinance in terms of traffic analysis. However, it also proposes that the impact analysis include a factor intended to account for the possibility that some restaurant traffic above and beyond that included in the standard marina trip generation figures might occur. The proposed additive factor is 25% of what would be associated with the restaurant if it were a stand-alone facility. It is important to understand that the ITE (Institute of Transportation Engineers) trip generation rates for marinas are based on statistics gathered for existing marinas across the United States, many of which have restaurants or other eating facilities as one of their components. As such, the figures already include trip generation associated with restaurants that are part of the marina operation. What is being suggested in proposed condition (d)(9) is that a “safety” factor be built into the traffic analysis to account for the possibility that the ITE figures may understate the amount of non-marina traffic (i.e., general public) at-

tracted to the restaurant. Unfortunately, the committee did not have an opportunity to discuss and debate this provision; however, the residential representatives on the committee, as well as some of the speakers at the Commission public hearing, were extremely concerned about traffic and road impacts and this proposed condition would help address that concern. As an example, the 25% additive traffic factor for a 150-seat restaurant would be approximately 11 trips in the peak PM hour and this condition would require those additional trips to be analyzed along with the estimated trip generation of the “marina.”

- Condition (d)(10) was not discussed by the committee but is proposed to provide an opportunity for a marina operator to request consideration, through the Special Use Permit process, for a proposal that is in some way different than would be allowed by the basic standards. For example, this would allow consideration of a proposal for a facility larger than the seats-to-slips ratio, or the 150-seat maximum, or even the 20-berth/wet slip minimum threshold. Or, it would allow consideration of one that does not meet the specified setback/spacing requirements. However, by requiring review through the SUP process, the Commission and the Board of Supervisors would have the ability to look specifically at the suitability of the proposal for the property and its surroundings, and the adjacent property owners would have an opportunity to provide input through the required public hearings. I believe this condition will provide appropriate opportunities for site-specific consideration of a proposal if the marina operator feels that the basic standards, which admittedly are somewhat of a “one-size-fits-all” system, do not recognize the unique character of his site or project. At the same time, I believe the use permit process provides reasonable protection for any adjacent property.
- Finally, the proposed amendment to Section 24.1-463 would make these same standards applicable to any “restaurant” proposed to be operated in conjunction with a private marina or yacht club. The committee did not talk specifically about this condition but there was consensus that the impacts associated with private facilities could be very similar to those of commercial facilities. At the Commission’s June 6th hearing there was some discussion to clarify that the intent of this section is not to define a yacht club’s incidental and occasionally used kitchen facilities as a “restaurant.”

Conclusion/Recommendation

I recognize, as did the Planning Commission, that these proposed conditions will not be 100% satisfactory to either the residential or commercial interests. However, I believe that the committee’s discussion identified reasonable and appropriate ways to deal with this very complicated land use issue and that the proposed conditions represent a reasonable balance of the differing viewpoints. I believe that the conditions contained in the Planning Commission’s recommendation would provide appropriate and reasonable opportunities for marinas to add a restaurant component to their operations while at the same time providing reasonable and appropriate protections to adjacent residential properties from potential negative impacts that might be associated with such uses. My only exception to the Planning Commission’s recommendation involves the seats-to-slips ratio where the Commis-

sion recommended four (4) and I recommend three (3).

I believe the committee discussion that preceded the Commission's recommendation has been very beneficial and has allowed this issue to be more thoroughly examined and understood by both "sides." The Commission's recommendation would establish a reasonable framework within which some restaurant activity could be permitted as a matter-of-right in conjunction with marinas, which was the premise of the original amendment sponsored by the Board. The committee's extensive discussions verified that the existing WC/I zones in the County are unique and, in that regard, it is difficult to create a "one-size-fits-all" system. Of course, the easiest way to solve that dilemma is to require that all proposals be evaluated on a case-by-case basis through the Special Use Permit process, as was the Commission's preliminary consensus at its May 2nd work session, and still is the position of several members. However, the committee's discussions seemed to indicate that it may be possible and reasonable to allow something to occur as a matter-of-right, as long as there are appropriate performance standards. The Commission concurred in this and it is in that spirit that proposed Ordinance No. 01-10 is presented and recommended for your consideration.

Carter/3337

Attachments

- PC01-12
- PC Alternate, as amended 5/2/01
- Committee Roster
- Meeting Notes
- May 30 Alternate Draft
- Proposed Ordinance No. 01-10